IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.1030 of 1997

Sivakatatcham .. Appellant/Respondent/Plaintiff

Vs.

1.Murugiah Pillai
2.Singaravelu
3.Pakkirisamy .. Respondents/Appellants/Defendants

Prayer: This appeal has been preferred under Seciton 100 CPC against the decree and Judgment dated 28.02.1997,made in A.S.No.8 of 1997 passed by the Additional Subordinate Judge, Mayiladuthurai, reversing the decree and judgment dated 10.10.1996 in O.S.No.9/1991 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : Mr.J.Ramakrishnan
For Respondents : Mr.S.Sounthar

JUDGMENT

This appeal has been preferred against the decree and judgment in A.S.No.8 of 1997 on the file of the Additional Subordinate Judge, Mayiladuthurai. The plaintiff filed O.S.No.9 of 1991 before the Additional District Munsif, Mayiladuthurai, for bare injunction in respect of the suit property and got a decree in his favour, but on appeal by the defendants in A.S.No.8 of 1997 befor the Additional Subordinate Judge, Mayiladuthurai, he has lost his case, which necessitated the plaintiff to approach this Court by way of Second appeal.

2. The short facts in the plaint relevant for the purpose of deciding this appeal are as follows:-

2(a) The plaint schedule property is a punja land situated at Malliyam Village in Anaimelagaram Vattam. The plaint schedule property originally belong to Malliyam Pathinettam Perukku ursava trust owned by Kasthuri Rengachari Vahayara. They have conveyed the suit property in favour of the plaintiff by virtue of a registered sale deed dated 9.3.1989 for due and valuable consideration. The plaintiff was put into possession of the suit property ever since from the date of purchase. Prior to his

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purchase his vendors were in possession and enjoyment of the same. The plaintiff is owning nanja lands in and around the suit property. The very purpose of his purchase is to use the same as a thrashing floor for his nanja lands. Accordingly he is using the same as a thrashing floor. The plaintiff has produced a certificate from the Village Administrative officer to prove his possession.

2(b) The 1st defendant is related to the plaintiff through his wife's side. The 2nd and 3rd defendants are close relatives of the plaintiff. They are in no way connected with the suit property. The suit property is being conveyed to the plaintiff within a specific boundaries. The owners of the properties situated on all four sides of the plaintiff's property are not in cordial terms with the plaintiff. There was a dispute between the plaintiff and the 1st defendant in respect of the division of the property that belonged to one Rethinam Pillai who happened to be a relative of the plaintiff through his mother-in-law's side. With a view to wreck vengence and to bring down the plaintiff to the evil dictates of the 1st defendant, the 1st defendant is adopting all sorts of belligerent attitude.

2(c) On 07.01.1991 the 1st defendant along with 2nd & 3rd defendants, has attempted to cause interference with the plaintiff's peaceful possession and enjoyment of the suit property. But the timely intervention of the plaintiff their attempts failed. The plaintiff is having a reasonable apprehension in his mind that once again the defendants may trespass into the suit property. Hence, the suit for injunction.

3. The 1st defendant has filed a written statement which was adopted by 2nd & 3rd defendant as follows:-

3(a) R.S.No.134/15, the plaint schedule property, lies on land as one unit comprises of 32 cents. It has been surrounded in all four sides with nanja lands. The suit property is being used as a thrashing floor by the nunja land owners around the suit property from time immemorial. The plaint schedule property belongs to Pathinettam Perukku ursava trust, it is an endowed property. After knowing the purchaser of 18 cents in the suit survey number property by the plaintiff one Ramadas has also purchased 12 cents from the above said endowment on 15.5.1990. Even though the plaintiff has purchased 18 cents from the suit survey number property, the said property was not divided from the main unit and no separate possession was handedover to the plaintiff even after the execution of the sale deed. Till today the entire thrashing floor lies as a single unit. The other joint pattadors have not divided their respective shares in the above said thrashing floor even today.

3(b) The suit property is being used as a thrashing floor by the entire nanja land owners. Without disclosing the above said fact the plaintiff has obtained ad-interim injunction in the suit on 10.01.1991. After getting ad-interim injunction the plaintiff had installed a filter

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point on the western side of the suit property. Hence, the defendants have preferred a police complaint. On 11.01.1991 the plaintiff made an attempt to put up fence around the suit property with the help of his henchmen. Immediately the defendants rushed to the Court for appointment of a Commissioner and the Commissioner was also appointed on the very same day.

3(c) The learned Commissioner inspected the property and noted down the physical features of the property and filed his report on 11.02.1991. After the purchase of 18 cents in the suit survey number property, the plaintiff has not obtained the possession from his vendor. The defendants have not made any attempt to trespass into the suit property on 7.1.1991 as alleged by the plaintiff in his plaint. Even today the suit property is being enjoyed in common as a thrashing floor by the nunja land around the suit property. Hence, the suit is liable to be dismissed with costs of the defendants.

4. On the above pleadings the learned trial judge has framed four issues for trial. The plaintiff has examined himself as P.W.1 and exhibited Ex.A.1. The 1st defendant was examined as D.W.1 and also examined six more witnesses on his side. On the side of the defendants Ex.B.1 to B.4 were marked. After remand, the plaintiff has marked Ex.A.2 to A.9 and has also examined P.W.2 to P.W.4 and through witnesses Ex.X.1 to X.5 were marked. A Commissioner was appointed in this case by the trial Court for noting down the physical features of the property and accordingly the Commissioner has inspected the suit property and filed his report-Ex.C.1 and plan Ex.C.2.

5. After going through the oral and documentary evidence let in before the trial Court, the learned trial judge has decreed the suit after remand. Aggrieved by the findings of the learned trial judge, the defendants have preferred A.S.No.8 of 1997 before the Additional Subordinate Judge, Mayiladuthurai, who after careful consideration of the rival submissions of both the parties, has ultimately come to the conclusion that the plaintiff is not entitled to any relief in the suit and accordingly allowed the appeal thereby setting aside the decree and judgment of the trial Court. Hence, the second appeal before this Court by the plaintiff.

6. The following substantial questions of law are involved in this second appeal:-

"i) Is not the Judgment of the lower appellate Court vitiated on account of its failure to apply the axiomatic principle in law in respect of a vacant site that possession follows title?

ii) Whether the Lower appellate Court is correct in law in misconstruing the recitals in Ex.A.1 and arriving at a finding which is totally contrary to the recitals in Ex.A.1?

iii) Whether in law the lower appellate Court is correct in

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non-suiting the plaintiff for not proving the location of the property purchased by the defendants under Ex.B.1?"

7. The Points:-

7(a) The learned counsel for the appellant/plaintiff would submit that the plaintiff has purchased the suit property under Ex.A.1. The learned counsel relying on AIR 1970 KERALA 310 (V 57 C 51) (Thiruvanchan Sankaran Vs. Kunjipillai Amman Gouri Amma and others), and contended that as per section 114 of the Evidence Act a presumption is to be taken in favour of the plaintiff since he has title under Ex.A.1 in respect of the suit property and that possession goes with the title and that the first appellate Court ought to have recognized the possession of the plaintiff in respect of the suit property, and granted an order of injunction as prayed for. The exact recital in the above dictum runs as follows:-

> "The presumption that possession goes with title is not limited to particular kinds of cases where proof of actual possession is impossible on account of the nature of land such as boundary land, forest land or submerged land. The presumption applies to all kinds of land and where the plaintiff proved his title but not any act of possession and the defendant did not prove possession except at some intervals within 12 years of suit, the presumption that possession follows title will come into play."

The short facts of the above said case is that the suit was filed for recovery of landed property with incidental reliefs. The trial Court dismissed the suit finding that the plaintiff has failed to prove possession with herself or her predecessor in title within 12 years of the suit. On appeal the first appellate Court decreed the suit holding that the plaintiff has proved her long continuous and uninterrupted possession over the statutory period in respect of the suit property and accordingly allowed the first appeal. Hence, the 1st defendant has preferred the above said Second Appeal before the High Court of Kerala. Only under such circumstances, it has been held by the learned judge of the High Court of Kerala as follows:-

> "Proof of title is the condition when only the presumption of possession can come to play and when it thus comes to play it requires the Court to find possession with the legal owner unless there is sufficient evidence before it to find contrariwise. It follows that if neither party has adduced any evidence as to possession, then the presumption stands uncontroverted and must govern decision on possession."

But the facts of the above cited dictum will not be applicable to the present facts of the case because in the said dictum the plaintiff was in continuous and uninterrupted possession over the suit property over the statutory period of 12 years and the plaintiff filed the suit for recovery of possession from the defendant on the ground that she has prescribed title by way of adverse possession. In the case on hand, the plaintiff is not claiming that he has prescribed title to the suit property by way of

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adverse possession but the specific case of the plaintiff is that he has prescribed title under Ex.A.1-sale deed. This suit is not for recovery of possession but for bare injunction on the basis of Ex.A.1. So it is the bounden duty of the plaintiff to prove beyond any reasonable doubt that in view of Ex.A.1-sale deed he is in possession of the suit property and that the defendants are making attempt to interfere with the peaceful possession and enjoyment of the suit property.

7(b) The only point to be considered in this appeal is whether the plaintiff has proved his possession in respect of the suit property. Ex.A.2 is the notice issued by the Tahsildar Mayiladuthurai on the application filed by the plaintiff for change of patta for which the the plaintiff was asked to appear before the Tahsildar along with his sale deed. Ex.A.3 is the order passed by the Deputy Tahsildar on 10.7.1995. Paragraph 8 to Ex.A.3 is relating to the suit property i.e, survey No.134/15 measuring 18 cents. The order at paragraph 8 under Ex.A.3 reads as follows:-

"பட்டா எண்.65–ல் உள்ள ப.ல எண்.134/15–ல் உள்ள 0.25.5 ஏர்ஸ் நஞ்சை நிலத்தில் திரு.சிவகடாட்சம் 0.18 சென்ட கிரயம் பெற்றுள்ளதால் பட்டா எண்.65–லிருந்து ப.ல எண்.134/15–ல் உள்ள 0.25.5 ஏர்ஸ் நஞ்கை நிலத்தினை விலக்கி தனிப்பட்டாவில் ஆடி 18–ம் பெருக்கு (1) வை.கோவிந்தசாமி பிள்ளை (2), சிவகடாட்சம் (0.07.0 ஏர்ஸ்) (3) என கூட்டாக தாக்கல் செய்திட ஆணையிடப்படுகிறது"

So it is evident from Ex.A.3 that a joined patta has been issued in favour of three persons Viz. the plaintiff, one Govindasamy Pillai and Pathinettam Perukku ursava trust (endowment) in respect of the 18 cents in S.No.134/15. It is pertinent to note that that so far the plaintiff has not challenged the above said Ex.A.3-order before the higher Revenue Authorities. Only the Revenue Authorities have power to grant patta and it has been well established by rule of law that the Court cannot interfere with the granting of patta, which is the prerogative purview of the Revenue officials. So the above said order passed by the Deputy Tahsildar under Ex.A.3 cuts at the root of the case of the plaintiff that in view of Ex.A.1 he is in exclusive possession and enjoyment of 18 cents in suit survey number 138/15. The plaintiff has also not impleaded the other joint patta holders in respect of S.No.134/15 in patta No.65. This point has been dealt with by the learned first appellate Court in its judgment at para 9. The appeal preferred by the defendants before the first appellate Court was allowed on the ground that the plaintiff has failed to prove his separate possession in respect of the plaint schedule property. The learned first appellate judge has held that Ex.A.4 to A.9 are subsequent to the filing of the suit i.e., after remand. A Commissioner was also appointed to note down the physical features of the property.

7(c) The Commissioner in his report-Ex.C.1 has categorically observed that he could not identify or locate the 18 cents in the suit survey number property. The learned Commissioner has filed Ex.C.2-plan

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showing the suit survey number property which lies in one unit measuring 32 cents marked as 'A' 'B' 'C' 'D'. If the case of the plaintiff is true then he would have earmarked his property i.e., 18 cents purchased under Ex.A.1 or he would have taken steps to put fence with the help of a surveyor. The Village Administrative Officer in his evidence as P.W.4 has stated that suit survey number property was used as a thrashing floor by the land owners in and around the suit property and he has also produced Ex.X.4. But in Ex.X.4-list containing the poromboke land in Anaimelagaram Village the suit survey number property is not included. But D.W.5 and D.W.7 have deposed to the fact that the suit property is being used as a thrashing floor by the nanja land owners around the suit survey number property. The remedy open to the plaintiff is to challenge the order passed under Ex.A.3 for issuance of separate patta in his favour, since there is no evidence in favour of the plaintiff to show that he is in exclusive possession and and enjoyment of the plaint schedule property as rightly held by the first appellate Court, which does not warrant any interference from this Court. The plaintiff is not entitled to get an order of injunction against the defendant. Points are answered accordingly.

8. In the result, the second appeal is dismissed confirming the decree and judgment in A.S.No.8 of 1997 on the file of the Additional Subordinate Judge, Mayiladuthurai. In the circumstances of the case there is no order as to costs.

ssv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To,
1.The Additional Subordiante Judge,
Mayiladuthurai.

2.The Additional District Munsif,
Mayiladuthurai.
3. The Record Keeper. V.R. section,
High Court, Chennai.
+ One cc to M/s. Sarvabhuman Associates SR 17880
+ One cc to M/s S. Sounthar Advocate SR 18097
AKM (co)
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